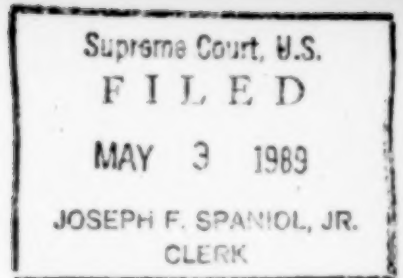


No. 88-1461



In The
Supreme Court of the United States
October Term, 1988

RICHARD P. CHRISTY, THOMAS B. GUTHRIE
and IRA PERKINS,

Petitioners,

vs.

DONALD P. HODEL, Secretary of the Interior
and
THE UNITED STATES DEPARTMENT OF INTERIOR

Respondents.

PETITIONERS' REPLY MEMORANDUM

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May, 1989

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On page 7 of their opposing brief, Respondents make the following assertion, impliedly in support of their position that no violation of the Fifth Amendment taking clause has occurred:

Moreover, the statute [Endangered Species Act] does not entirely bar efforts by landowners to protect their property from depredations by grizzly bears; it simply proscribes the killing of grizzlies, with narrow exceptions.¹

Respondents' inclusion of this statement shows a perception on their part that this issue may well be material to this or any Court's ruling on the taking question.

It is the position of Petitioners that the quoted statement is wholly erroneous as applied to the species *ursus arctos horribilis* and Respondents reliance thereon simply underscores the District Court's error in advancing to a ruling in this case without the benefit of discovery. It is commonly known that the grizzly bear is without equal in its strength and ferociousness.² These characteristics demonstrate the futility of any of the "...efforts to protect...property" alluded to at page 7 of Respondents' Brief. Thus, while the Act and regulations do not on their faces proscribe any and all means of protecting

1. Similarly, the court of Appeals for the Ninth Circuit concluded in its opinion that the Act did not proscribe the defending of property by means other than killing. (Pet. App., p. 20a)

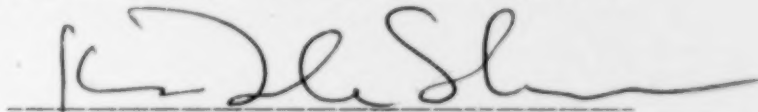
2. In the article *Grizzly and Man When Species Collide*, National Wildlife, Feb./Mar. 1988 quoted in Petitioners' Appendix at p. 69a, the grizzly is noted as

"... most dangerous of the more than 400 species protected under the U.S. Endangered Species Act. It has the strength to kill a man with a half hearted blow. Perhaps even more threatening, it is largely beyond human control. A creature that must be met on its own terms. * * *"

stock from depredating grizzly bears, this, as a practical matter, is meaningless. Petitioners were, however, precluded by the District Court from establishing this by way of discovery.

The foregoing discussion re-emphasizes the need for this Court to review the Ninth Circuit's affirmation of the District Court's grant of summary judgment to the Respondents, when this as well as other important issues of fact previously referred to were unresolved. The Petition for Writ of Certiorari should be granted.

Respectfully submitted this 3rd day of May, 1989.



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